



**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

**Administrative Decision
General Permit ADL 234164**

**Recreational Off-Highway Vehicle
AS 38.05.850**

Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) proposes to issue a state-wide General Permit (GP) for Recreational Off-highway Vehicle (ROV) use on DMLW managed lands.

For purposes of the ROV GP, an ROV is defined as any motorized vehicle:

- Unable to be lawfully registered for on-highway use
- 80 inches or less in width
- Having a curb weight of 2,500 pounds or less
- Designed to travel on four or more non-highway tires
- Manufactured for recreational use by one or more persons

Scope of Decision

The scope of this decision is limited to determining if it is appropriate for DMLW to issue a GP for ROV use on general state land.

Statutory Authority

This decision is being adjudicated pursuant to AS 38.05.035(a) (powers and duties of the director) and AS 38.05.850 (permits).

Background

The purpose of this GP is to facilitate the use of general state land, streamline the permitting process, and reduce backlog. Traditionally, off-road vehicles weighing 1,500 pounds or more required authorization via a Land Use Permit (LUP), as the vehicle exceeded the Generally Allowed Use (GAU) thresholds per 11 AAC 96.020. LUP adjudication is time consuming for staff and often this process is not necessary for low impact activities on state land. Additionally, modern side-by-sides (SxS) typically weigh between 1,200-1,700 pounds. The previous definition of off-road vehicle weight limits was based on the weight of a 6x6 Argo vehicle and are well over two decades old. Under the State's current Wheeled Vehicle Use on State Lands Fact Sheet, all-terrain vehicles (ATV), off-highway motorcycles (OHM), recreational off-highway vehicles (ROV), and highway vehicles (HV) are separated by specific criteria that delineate typical off-road uses and special circumstances falling outside of these parameters requiring additional authorizations.

For de minimis activities on state land, it is the direction of DMLW to move towards a more streamlined and efficient permitting process. DMLW provided other agencies an opportunity to comment on this proposal.

Agency Scoping

Agency Review for the draft Wheeled Vehicle Factsheet was conducted from September 29, 2022, to October 14, 2022. The following agencies were included:

ADF&G Habitat Section
DNR Water Section
DNR Realty Services
United States Fish and Wildlife Service
DNR Division of Forestry
DNR Survey Section
DNR Office of History and Archeology
DNR Land Sales
Department of Environmental Conservation
DNR, Division of Oil and Gas
Army Corps of Engineers
Environmental Protection Agency
DNR State Parks
Alaska Department of Transportation
DNR Statewide Abatement of Impaired Land Section

In addition to those agencies, various sections within DMLW were also included. DMLW received the following comments.

Commenter: ADF&G

1. Question – *Will DNR use curb weight, dry weight, or gross vehicle weight?*

DMLW Response– *DNR will use curb weight, defined as the total weight of a vehicle, including a full load of fuel, oil, and water, but without any passengers or cargo.*

2. Question – *Would a recreational off-highway vehicle (ROV) permit conflict with the new regulations allowing ATV's and snowmachines on certain roads?*

DMLW Response– *DNR's general permit would only authorize travel on DNR managed lands. Further, ROV's by DNR definition are unable to be lawfully registered for highway use.*

Commenter: DNR Water Section

Requested clarification on the list of generally allowed uses described in factsheet.

DMLW Response: Edits have been made to clarify the purpose of the general permit and which GAU's are being referenced.

No other responses or comments were received.

Public Notice

DMLW will post this decision, the GP, and the Wheeled Vehicle Factsheet on the State of Alaska Online Public Notice System for 30 days to notify the general public of the issuance of the GP.

Environmental Considerations

The ROV GP provides authorization for an ongoing and existing ROV use. Therefore, the environmental risks associated with the proposed GP are minimal. Potential risks may be minimized by ROV operators following the permit stipulations outlined in the GP.

Discussion

Recreational vehicles, commonly referred to as Side by Sides (SxS) or Utility Terrain Vehicles (UTV), have grown in popularity over the last two decades. Manufacturers have continued to improve and upgrade these vehicles, thus weights and dimensions have also greatly changed since these vehicles were previously addressed in GAU. Currently, a model of SxS may vary in weight depending on upgrades from between 1,000-2,000lbs.

DMLW has been evaluating the issue of the use of ROVs that exceed the weight limit defined in GAU on state land. GAU activities for general state land are outlined in regulation (11 AAC 96.020). Activities listed in GAU do not require a permit; all other activities require some type of authorization from DMLW. Users of ROVs that exceed the weight limit of 1,500 lbs. curb weight are required to obtain a LUP from DMLW. Today's modern ROVs, as mentioned previously, are typically larger and heavier than 1,500 lbs. and therefore, require a LUP. The Regions within the DMLW do not have the capacity to adjudicate the number of applications that would be received if ROV users adhered to the requirement to obtain a LUP. A LUP requires agency review, public notice, and a written decision. A LUP typically takes 30 days to adjudicate. In addition, we anticipate significant objection to the fees associated with a LUP. It is not feasible for DMLW to enforce the permitting requirement for use of ROVs on general state land that exceed 1,500 lbs. This is not consistent with regulation.

A GP would not require individual ROV users to obtain an authorization through DMLW. The GP would authorize ROV use generally across state land provided it adhered to conditions outlined in the GP. This is not unlike GPs issued by ADF&G for stream crossings. No fees would be associated with a GP. GPs can be issued under the delegated statutory authority (AS 38.05.850).

DMLW proposes an alternative to manage ROV use on state land that meets the following criteria: adheres to state regulation, does not contribute to backlog applications, does not contribute to compliance issues, and facilitates the use of state land by ROV users.

Adheres to regulations. The alternative must adhere to statute and regulation. Currently staff are in a difficult position of informing the public that although regulation requires an LUP for ROVs that exceed 1,500 lbs. DMLW cannot realistically or feasibly enforce that requirement.

Does not contribute to backlog. DMLW continues to work towards finding new ways to streamline the permitting processes and reduce the backlog of applications. The backlog consists of applications that have not been adjudicated within established timelines. Backlog has been a focus

of DNR leadership and the Legislature over the last decade. Any alternative considered must take into consideration the impact to workload and backlog.

Does not contribute to compliance issues. In addition, DMLW has limited enforcement authority. If someone uses an ROV that exceeds GAU, the only option staff have is to educate the user of the requirement to get a permit and then if they continue their use without obtaining a permit, we must engage the Alaska State Troopers to issue a citation for trespass. Any alternative considered must not contribute to the current challenges of enforcement.

Facilitates the use of state land. DMLW's mission is to provide for the appropriate use and management of Alaska's state-owned land and water, aiming toward maximum use consistent with the public interest. Any alternative should be consistent with the mission of DMLW to facilitate the use of state lands.

An interim GP would provide an opportunity for staff to evaluate the effectiveness of increasing the weight limit, while also identifying any unintended consequences. There has been some discussion regarding changing the GAU regulation to increase the weight limit. Many ROV users are already familiar with GAU. While DMLW may pursue a regulation change in the future, a GP can be issued now. A GP offers more flexibility than a regulation change. Using the GP while a regulation change is being considered may help inform the regulation change. In addition, it is anticipated that through a proposed GAU regulation change process DMLW will receive additional stakeholder input through the scoping and public notice steps.

DMLW recognizes that the proposed alternatives do not take into consideration the current impacts of ROV use on state land. Since the use is already occurring, it is not anticipated that implementation of a GP will increase impacts. The use is already occurring, it just is not authorized under GAU. Although impacts to land may not increase with issuance of a GP, DMLW understands the importance of developing methods and practices to assess current impacts of motorized use to determine if impacts are at an acceptable level, or if other alternatives or mitigation measures need to be developed.

Issuing a GP for ROV use on general state land adheres to state regulation, does not contribute to backlog applications, does not contribute to compliance issues, and facilitates the use of state land by ROV users.

This GP authorizes the use and operation of a ROVs on general state lands managed by DMLW. The GP is not valid for ROV use on private land, state parks, legislatively designated areas, or land owned or managed by other state agencies such as the University of Alaska, Alaska Mental Health Trust, Department of Transportation and Public Facilities, or the Alaska Railroad. Some special use areas may also restrict ROV use. No preference right for use or conveyance of state land is granted or implied by the issuance of this permit. It is not transferable and cannot be assigned, subleased, or rented.

If the vehicle is outside the parameters of an ROV or GAU, then the user would be required to obtain a standard land use permit which includes agency review and public notice.

Issuance of a GP for ROV use does not alleviate users from obtaining a Fish Habitat Permit from ADF&G for crossing waterbodies if needed.

Nothing in this decision restricts DNR-DMLW authority to require a land use authorization for any ROV if deemed necessary for the protection of state land and resources.

Performance Guaranty and Insurance

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the grantee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

DNR, DMLW will not require those covered under the GP to furnish a performance guaranty or insurance due to the limited risk and temporary nature of the activity. GP stipulations will reserve DMLW's ability to require a performance guaranty or insurance at any time if determined to be necessary.

Fees

The general permit is not subject to an application fee or an annual use fee.

Term

Effective use dates: Up to 5 years.

Decision

Based upon the information received by other agencies, the need to streamline the permitting process, as well as review of relevant planning documents, statutes, and regulations related to this activity, it is the decision of DMLW to issue a GP for ROV use on general state lands on the condition that the proposed use meets the criteria, and all permit stipulations are followed as described in the attached GP. During the term of the GP, an inspection may be conducted at the discretion of DMLW to ensure permit compliance. This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance.

Samantha Carroll

7/21/2023

Samantha Carroll
Regional Manger

Date

Attachments

General Permit
Wheeled Vehicle Factsheet

An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner’s Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A copy of 11 AAC 02 is available on the department’s website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.